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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

)	
THE UNITED STATES for the use of)	
GMW Fire Protection, Inc.,)	
an Alaska Corporation,)	
)	
Plaintiff,)	
v.)	
)	
KANAG'IQ CONSTRUCTION CO., INC.,)	
an Alaska Corporation and)	
WESTERN SURETY COMPANY, a)	
South Dakota Corporation,)	
)	
Defendant.)	
<hr/>) Case No. A-05-0170 CV (TMB)

TRIAL BRIEF

GMW, having twice previously provided a factual background of this dispute, will as requested not bore the Court with another long one. In summary, the parties originally envisioned this project as a unit price contract. The project had not been designed at the time, however, and drawings were never provided to GMW. After the contract was awarded, GMW designed and engineered the fire alarms and sprinklers required for each building and estimated what it would cost to perform the work and provided Kanag'Iq with a price schedule/quote for each delivery order. GMW

agreed to perform the work for that price, and expected to be paid the price it quoted.¹

When the work was almost completed, Kanag'Iq stopped paying as billed and began claiming that the contract was a unit price contract and claimed that it had been overcharged by GMW. Although Glenn Johnson of GMW recounted the work and did everything else Kanag'Iq asked him to do in order to get paid, Kanag'Iq never paid. In 2006, long after the project was done, long after Kanag'Iq was paid, and about the time depositions were taking place in this case, Kanag'Iq alleged that it counted the materials on the project and that GMW had been overpaid.

GMW sued and Kanag'Iq counterclaimed alleged breach of contract, breach of the obligation of good faith and fair dealing (which is a breach of contract) and alleging a violation of the Alaska Unfair Trade Practices Act.

GMW's position about the money due to it, with authorities, is set out in its opposition to Kanag'Iq's motion for summary judgment. It's position with respect to Kanag'Iq's unfair trade practices claim is set out in its motion *in limine*.

GMW is aware of no surety defenses, so it is not submitting

¹ This was the same manner in which the government was working with Kanag'Iq. The government, agreed to pay Kanag'Iq a certain amount for each delivery order and provided an estimate sheet which, although it indicated certain units and unit prices, did not detail the materials that would necessarily be installed as that had not been determined.

any surety jury instructions, with the understanding that a successful ending with Kanag'Iq will make the surety liable for the resulting judgment. It is submitting jury instructions for breach of contract and contract modification that explain the contract dispute between the parties. It is also submitting an instruction with respect to quantum meruit damages in case the jury finds that there was no contract.

It has also submitted instructions for the Alaska Unfair Trade Practices claim but by doing so is not admitting that any such claim is cognizable in this case or that such instruction should be given. In fact, it believes to the contrary.

Respectfully submitted this 2ND day of January, 2008.

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CERTIFICATE OF SERVICE

I hereby certify that on the 2ND of January, 2008, a copy of the foregoing document was served electronically on Tom Gingras, attorney for Kanag'Iq Construction, Inc.

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